

two years after listing on the CHX.<sup>17</sup> Changes to CHX Maintenance Standards will become effective upon Commission approval.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act<sup>18</sup> in general, and furthers the objectives of section 6(b)(5) of the Act<sup>19</sup> in particular, because it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received. The Exchange, however, did notify its issuers of the types of proposed rule changes that it was contemplating and has not received any objections to those proposals. One issuer's verbal comments "seeking flexibility in the effective dates of, or the scope of the exceptions from, the proposals for the new independence requirements" have been incorporated into the Exchange's rule proposal.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

<sup>17</sup> An issuer transferring to the CHX from another market with substantially similar governance standards must comply with such governance standards at the time the issuer lists with the CHX, or within any transition period that was provided by the other marketplace.

<sup>18</sup> 15 U.S.C. 78f(b).

<sup>19</sup> 15 U.S.C. 78f(b)(5).

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change, as amended, that are filed with the Commission, and all written communications relating to the proposed rule change, as amended, between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to file number SR-CHX-2003-19 and should be submitted by November 18, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>20</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48678; File No. SR-GSCC-2002-04]

### **Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Approving Proposed Rule Change to Institute Informal Hearing Procedures for Fine Disputes**

October 22, 2003.

#### **I. Introduction**

On June 28, 2002, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") and on August 19, 2003, amended proposed rule change SR-GSCC-2002-04 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> Notice of the proposal was published in the **Federal Register** on

<sup>20</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

September 2, 2003.<sup>2</sup> For the reasons discussed below, the Commission is approving the proposed rule change.

#### **II. Description**

Since 1998, GSCC has had the authority to impose fines in order to promote greater compliance with its funds settlement debit and clearing fund deposit deficiency call deadlines.<sup>3</sup> GSCC Rule 37 contains procedures whereby a member can dispute any fine assessment through a formal hearing process. Rule 37 also permits GSCC to establish procedures for a hearing not otherwise provided for in the rules.<sup>4</sup> GSCC seeks authority to specifically incorporate into its rules informal hearing procedures with respect to disputed fines.

Pursuant to GSCC's new procedures, if a member disputes a fine and asks for a formal hearing in the manner already specified in the rules, GSCC's management will automatically conduct a review of the disputed fine. Based on the documentation already required in the rules and/or a meeting arranged with the member, management may determine that the fine should be waived. If management determines that the fine should be waived, it must inform the Membership and Risk Management Committee of its determination and the reasons for that determination. The Committee has the ability to accept or reject management's determination. If the Committee accepts management's determination, the fine will be waived. However, if the Committee chooses not to accept management's determination or if management had not determined in its review that the fine should be waived, the member has the right to the formal hearing already provided for in Rule 37.

In addition, GSCC's rules are being amended to require that if a fine is assessed, the member must pay the fine within 30 calendar days (currently 90 days) after it receives the fine imposition letter. If the member requests a hearing in accordance with GSCC's rules to dispute the fine, the fine will not be owing while the hearing is pending.

#### **III. Discussion**

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to perfect the mechanism of a national system for the

<sup>2</sup> Securities Exchange Act Release No. 48411 (August 26, 2003), 68 FR 52256.

<sup>3</sup> Securities Exchange Act Release No. 39746 (March 12, 1998), 63 FR 13439 (March 19, 1998) [File No. SR-GSCC-97-04].

<sup>4</sup> Government Securities Clearing Corporation Rule 37, Section 7.

prompt and accurate clearance and settlement of securities transactions.<sup>5</sup> The Commission finds that GSCC's proposed rule change is consistent with this requirement because it clearly sets forth in GSCC's rules its procedures for management's review and possible waiver of fines and should provide members with a more efficient and less burdensome method for the possible resolution of disputed fines before a full hearing takes place. This added efficiency should contribute to the perfection of the national system for clearance and settlement.

#### IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-GSCC-2002-04) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

Margaret H. McFarland,

Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48674; File No. SR-NASD-2003-149]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to SuperMontage and ITS Securities

October 21, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 6, 2003 the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change, as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit

comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is proposing to enhance the Nasdaq National Market Execution System ("NNMS" or "SuperMontage"). Nasdaq proposes to trade via SuperMontage all securities that are eligible for trading via the Intermarket Trading System ("ITS Securities"). Under the proposal, NASD members will trade ITS Securities using the SuperMontage functionality that the Commission has previously approved for the trading of Nasdaq-listed securities, with certain modifications needed to ensure that NASD members continue to comply with all pre-existing NASD and Commission rules governing the trading of ITS Securities. Nasdaq will publish a phase-in process for the trading of ITS Securities on the SuperMontage platform after approval by the Commission. The text of the proposed rule change is below. Proposed new language is *italicized*; proposed deletions are in [brackets].

\* \* \* \* \*

#### 4700. Nasdaq National Market Execution System (NNMS)

##### 4701. Definitions

Unless stated otherwise, the terms described below shall have the following meaning:

(a) The term *active NNMS securities* shall mean those NNMS eligible securities in which at least one NNMS Market Maker or *ITS/CAES Market Maker* is currently active in NNMS.

(b) Reserved

(c) The term *Attributable Quote/Order* shall have the following meaning:

(1) For NNMS Market Makers and NNMS ECNs, a bid or offer Quote/Order that is designated for display (price and size) next to the participant's [MMID] *MPID* in the Nasdaq Quotation Montage once such Quote/Order becomes the participant's best attributable bid or offer.

(2) For *ITS/CAES Market Makers*, a bid or offer Quote/Order that is designated for display (price and size) next to the participant's *MPID* once such Quote/Order becomes the participant's best attributable bid or offer.

[(2)](3) For UTP Exchanges, the best bid and best offer quotation with price and size that is transmitted to Nasdaq by the UTP Exchange, which is displayed next to the UTP Exchange's [MMID] *MPID* in the Nasdaq Quotation Montage.

(d) The term *Automated Confirmation Transaction* service or *ACT* shall mean

the automated system owned and operated by The Nasdaq Stock Market, Inc., which compares trade information entered by ACT Participants and submits "locked-in" trades to clearing.

(e) The term *automatic refresh size* shall mean the default size to which an NNMS Market Maker's quote will be refreshed pursuant to NASD Rule 4710(b)(2), if the market maker elects to utilize the Quote Refresh Functionality and does not designate to Nasdaq an alternative refresh size, which must be at least one normal unit of trading. The automatic refresh size default amount shall be 1,000 shares.

(f) The term *Directed Order* shall mean an order *in a Nasdaq-listed security* that is entered into the system by an NNMS participant that is directed to a particular Quoting Market Participant at any price, through the Directed Order process described in Rule 4710(c). This term shall not include the "Preferred Order" described in subparagraph (aa) of this rule. *Directed Orders shall not be available for ITS Securities.*

(g) The term *Displayed Quote/Order* shall mean both Attributable and Non-Attributable (as applicable) Quotes/Orders transmitted to Nasdaq by Quoting Market Participants or NNMS Order Entry Firms.

(h) The term *Firm Quote Rule* shall mean SEC Rule 11Ac1-1.

(i) The term *Immediate or Cancel* shall mean, for limit orders so designated, that if after entry into the NNMS a marketable limit order (or unexecuted portion thereof) becomes non-marketable, the order (or unexecuted portion thereof) shall be canceled and returned to the entering participant.

(j) The term *Liability Order* shall mean an order that when delivered to a Quoting Market Participant imposes an obligation to respond to such order in a manner consistent with the Firm Quote Rule.

(k) The term *limit order* shall mean an order to buy or sell a stock at a specified price or better.

(l) The term *market order* shall mean an unpriced order to buy or sell a stock at the market's current best price.

(m) The term *marketable limit order* shall mean a limit order to buy that, at the time it is entered into the NNMS, is priced at the current inside offer or higher, or a limit order to sell that, at the time it is entered into the NNMS, is priced at the inside bid or lower.

(n) The term *mixed lot* shall mean an order that is for more than a normal unit of trading but not a multiple thereof.

(o) The term *Non-Attributable Quote/Order* shall mean:

<sup>5</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>6</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.